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No. 80-5727

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MONTY LEE EDDINGS, *Petitioner,*

v.

STATE OF OKLAHOMA, *Respondent.*

On Writ Of Certiorari To The Oklahoma Court Of Criminal Appeals

---

BRIEF FOR PETITIONER

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(918) 587-1168
Court-appointed Counsel for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTIONS PRESENTED

1. Whether the infliction of the death penalty on a who was sixteen at the time of the crime constitutes cru unusual punishment under the Eighth and Four Amendments of the Constitution of the United States

2. Whether the Court should address the plain erro mitted by the trial court when it refused to consider re mitigating evidence in violation of *Lockett* v. *Ohio*, 43 586 (1978)?

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MONTY LEE EDDINGS, *Petitioner*

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On Writ Of Certiorari To The Oklahoma Court Of Criminal Appe

BRIEF FOR PETITIONE

OPINIONS BELOW

The opinion of the Oklahoma Court of Crim firming petitioner's conviction of first degree m tence of death by lethal injection is reporte *State*, 616 P.2d 1159 (Okla. Cr. App. 1980) (A judgment of the District Court of Creek Coun and appears at A. 4-5.

The opinion of the Oklahoma Court of Crim firming the order waiving juvenile jurisdictio petitioner to stand trial as an adult is report *M.E.*, 584 P.2d 1340 (Okla. Cr. App.), *cert.* 921 (1978). The order of the Juvenile Divisio Court of Creek County is unreported.

JURISDICTION

The jurisdiction of this Court rests u § 1257(3), the petitioner having asserted belo here a deprivation of rights secured by the Co United States.

The judgment of the Oklahoma Court of C was entered on March 21, 1980. A timely peti

ing was denied by that court on Sept
tion for certiorari was filed on Nov

**CONSTITUTIONAL AN
PROVISIONS INV**

This case involves the Eighth Am
tion of the United States, which pr

> "Excessive bail shall not be re
> imposed, nor cruel and unusu

and the Fourteenth Amendment t
United States, which provides, in p

> "[N]or shall any State deprive
> or property without due proce

This case also involves the fol
statutes of the State of Oklahoma,
pendix A to this brief: Okla. Stat.
701.11, 701.12, and 701.13.

STATEMENT OF T

April 4, 197

Early on the morning of April 4
sixteen-year-old boy who had bee
father and his stepmother in Camd
went to the home of a friend, fou
(A. 50). Eddings revealed to Molt
come angry with him the night befo
items from a family van (A. 57); h
he planned to run away from home

[1] Eddings had attempted unsuccessfu
month. His probation officer, Steven D
1977, he had been contacted by the Ca
him that Eddings was being detained
Oklahoma. Eddings' parents had not re
authorities (A. 114).

cussion, Molt agreed to join Eddings
turned to Eddings' house.

Before they left, Eddings took a .4
basement where, according to Molt, h
the barrel (A. 50). He then placed tha
another .410 gauge shotgun and a
Volkswagen (A. 48).[2] The two le
Volkswagen for Joplin, Missouri, whe
up Eddings' fourteen-year-old sister
another younger sister, Brenda (Cert.
with petitioner's natural mother. Mol
Eddings acted "[j]ust normal, you kn
(A. 60), in fact he knew Eddings to b
because of problems with his father (

Rhonda Eddings had spoken with h
weekend at their grandmother's hom
cussed running away sometime du
(Cert. H., II, 083, 085). Rhonda appa
teen-year-old classmate, Terrie Cleve
run away because she had become
Clevenger agreed to accompany Rho

Eddings and Molt met the two y
ninth grade classroom in Joplin.
proved unable to leave work to accom
044), the four young people set out

---

[2] Molt testified that Eddings "said som
out of money or something, you know,
(A. 60).

[3] Each reference to the transcript of th
in the Juvenile Division of the District Co
indicated by the abbreviation "Cert. H.,"
ber indicating the volume of the transcr
dicating the pages referred to. The recor
before the Oklahoma Court of Criminal
was not brought back before that court

Interstate 44. None of the
and none had a specific
"[T]hey said something a
ico and California" (A. 9

Rhonda recalled that he
drive and seemed "kind
H., II, 086-087). After the
a turnpike gate to pick
(A. 32). Thomas testified
headed for Florida; when
the wrong direction, one
read a map and give them

Shortly after they picked
Howard Johnson restaura
drinks (A. 52). As he
Eddings dropped a cigaret
to retrieve it, the Volksv
road and down a shallow e
Apparently, a service stati
vehicle veer off the entry
Oklahoma Highway Patrol
side the restaurant havin
would investigate (A. 185

Some twenty minutes a
taurant and reentered the
saw a highway patrol car
remarked, "Here comes
came extremely angry (A
"[i]f this mother fucking
blow him away" (A. 66).
saying "he was tired of b
and stating that[4]

---

[4] Although Gary Molt test
friend express animosity aga
experienced "quite a bit of t
(A. 62).

"he was going to kill hi
well, you ain't going to
kind of thought it wa
know, I didn't say anyt
didn't believe I was th
Monty asked for a shot
board of the seat, and
one shell, and kind of p
gle, and just kind of fi

(A. 34).

According to Gary M
Volkswagen to a stop on th
to the officer's signal, Molt
been resting between the
placed it behind the driver
back behind the seat, how
loaded it with a single shel
proached from behind on th
(A. 54).

Hitchhiker Thomas recal
"Monty was kind of shakin
asked him if he had kille
know" (A. 34).

"Q. Was he silent all
A. [Thomas]: He w
as I; we were all
Q. What was he say
A. He was just mu
understand."[6]

(A. 38).

---

[5] The other shotgun and the
behind the rear seat (A. 64).

[6] Terrie Clevenger saw the
blood came out, and he fell to
Chief Medical Examiner of th
ficer Crabtree had suffered a

After firing the
recalled Eddings s
have shot an Offi
Soon after they res
Thomas to throw a
(A. 54-55).

John Marquiess
vehicle pulled awa
ficer Crabtree lyin
alert on his citizen
was apprehended
thereafter (A. 47
Eddings observed
to the side of the r
and laid down on

Eddings was a
Sheriff's Departm
held in custody (A
Patrolman Joe In
standing in "a hal
partment" (A. 76
and a half to two
looked over his sh
Leon Spencer wh
Mr. Eddings at thi
that he would sho

---

which inflicted "da
fourth and fifth ribs
ventricles of the he
guination, or bleedi
would have been w

[7] Officer Inman te
had simply spent th
his own choice" (A

[8] Trooper Spence
Another Highway
the evening, after I

On Tuesday, A
Monty Eddings ap
District Court of
parents had come
I, 002-003). The
attorney was seek
adult, set a hearin
retain counsel (Ce

Three days later
Court, appeared o

---

a light being left on i
shot one of you peop
out" (A. 103).

[9] Baker raised at th
ings. He informed th
the first time this mo
what I've read in th
There have [sic] bee
cursive [sic] researc
whatever relevant fa
stated that although
his cell this morning
wasn't able to condu
II, 006). (Baker was
have tried to speak v
of a highway patroln
Saturday we had a p
ent throughout the e
to the jail, I am no
clearance from the I

Baker urged that "
H., II, 010), includi
005). The court nev
II, 011-012). It did r
pare, and did offer
012).

presente
022-028)
H., II, 1
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juvenile
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though I
of Oklah
his reha
juvenile
054; 057

[10] Und
gated to
in order

[11] The
would ha
Rehabili
sibility f
male juv
ever, a I
discharg
the age

Eddin
(Richard
(Anthon
both offe
sented t
to Disch
[Baker v
§ 1139"
allow the
are satisf
even tho
life" (Ce

The co
to stand
Appeals
App.), ar
436 U.S.

On Ma
tendere t
of Creek
presente
show the
post-arre
timony,
above, w

[12] The S
(medical
pert); (iii)
thy Wayn
44-48) (p
friend); (
Leon Sp
Clevenge
(A. 99-10

aggravating circumstances: (i) that the murder was especially heinous, atrocious or cruel;[13] (ii) that the murder was committed for the purpose of avoiding or preventing a lawful arrest;[14] and (iii) that there existed a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.[15]

In mitigation, Eddings produced the testimony of four expert witnesses. Stephen Dorn, petitioner's Missouri probation officer,[16] testified that he had first met Monty Eddings when Eddings was fourteen and was referred to the juvenile authorities for four break-ins and for tampering with a motor vehicle (A. 105-107). In investigating Eddings' past, Officer Dorn learned that, when Eddings was five years old, his natural parents were divorced (A. 106). From the time he was five until he was fourteen, Eddings remained with his mother, Mary Kinney, in Jasper County, Missouri (A. 109). During this period, Ms. Kinney used alcohol excessively (A. 110), and, according to Jasper County authorities, may have been involved in prostitution (A. 110-111). The report which Probation Officer Dorn "received from the Jasper County Juvenile Court was . . . that . . . Monty could pretty much — in their own language — do his own thing. He could come and go when he wanted to . . . starting at the age of five." (A. 109). Observing that a childhood without rules or discipline often "leads [to] a chaotic adolescence." Officer Dorn testified that when Monty Eddings turned fourteen, Ms. Kinney sent him to his natural father, Ronald Eddings, "because she couldn't control the child" (*id.*).

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[13] OKLA. STAT. tit. 21, § 701.12(4).

[14] OKLA. STAT. tit. 21, § 701.12(5).

[15] OKLA. STAT. tit. 21, § 701.12(7).

[16] Dorn's title was Juvenile Officer, 26th District Circuit State of Missouri (A. 104). Under Missouri law, Officer Dorn served both as an investigator and as a probation official on juvenile cases (A. 104-105).

Ronald Eddings proved a marked contrast to Ms. Kinney in his child-rearing methods. Officer Dorn described him as "quite an authoritarian," noting that "Monty was always fearful of his father, because his father tended to overreact; or rather than discuss things with him, would take it out in more physical means . . . [b]eatings, slapped, that sort" (A. 113). According to Officer Dorn, Eddings' step-mother was unable to "cope with the problems of a fourteen . . . year old male child with serious emotional behavior" (A. 116) — indeed, her reports to juvenile authorities on Monty Eddings "indicated some sort of schism of thought" (*id;* see A. 126). In Officer Dorn's view,

> "Monty was very scared, I think, of his home situation with his father. He was very hostile. Monty didn't have anyone he could turn to and discuss his problems; and I think Monty was holding a lot of these things within him, and what happened was just a combination of Monty holding everything in and just releasing it all at one time. Toward the end, he became very hostile and bitter."

(A. 113).

Officer Dorn testified that Monty Eddings was adjudicated a delinquent on November 28, 1975, on four counts of burglary in the second degree and stealing, and one count of tampering with a motor vehicle. He was placed on probation and left in the custody of his father (A. 107).[17] During the following summer, Eddings returned to live with his natural mother in Jasper County and became involved in mail box vandalism and an assault.[18] These incidents resulted in a supplemental petition and further adjudication of delinquency (A. 108), following which Eddings was placed in a group home in the fall of

[17] The Juvenile Court diagnosed Monty Eddings as someone who "lied . . . was deceitful and manipulative." "[H]e couldn't trust people" (A. 120).

[18] Officer Dorn explained that the assault charge arose from a "street fight" involving Eddings and other boys at a local drive-in theatre (A. 118).

1976. He initially did well at the home (Cert. H. 35-39) bu
er was accused of several petty thefts (A. 108). He was
adjudicated a delinquent, and again placed on probation
his father and step-mother. This was four months befo
ran away (*id.*).

Officer Dorn summarized that Monty Eddings' actions
ved from "a mother who didn't have time for him in J
County . . . a stormy history of divorce; a . . . step-moth
in Camdenton who he finally goes to live with who has nc
how to raise a child, and who, herself, had problems with
dren; a father who just didn't have time for anything
doing his job" (A. 127).

Eddings' second witness in mitigation was Dr. H.
Dietsche, Chief Forensic Psychologist at the Eastern
Hospital in Vinita, Oklahoma (A. 131). Dr. Dietsche tes
that he had administered a number of psychological tes
Eddings. On the Wechsler Adult Intelligence Scale, Ed
"obtained an I.Q. score of 88, which would place him i
dull . . . average intellectual category . . . Making an ext
lation, I got a mental age of approximately . . . fourteen
three months [to] fourteen years six months" (A. 133-1
He concluded from Eddings' high scores on the sociopat
psychopathic scale of the Addiction Research Center Inv
ry and the psychopathic deviancy scale of the Minnesota
tiphasic Personality Inventory that Eddings had develo
"sociopathic personality" (A. 136). Dr. Dietsche indi
that "[t]he most recent studies . . . now think [socio
start[s] very early in life, and comes to a head more o
around fifteen years of age" (A. 138), in part because a

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[19] Dr. Dietsche explained that "the mental age concept
down pretty well, between fourteen to sixteen years of ag
134), and that, although the Stanford-Binet test computes
age from test scores, the Wechsler Scale given to Eddings do
Dr. Dietsche's estimate of fourteen years and six months was
fore only an extrapolation from test data, not a direct test res
135-136).

cents have "to try to find a vocation; they have to be [abl
. . . break[] away from the home ties; they have the in
boiling of their own sexual impulses that are now comir
the fore, . . . they have certain demands by others, socie
that they have to learn and adjust to; they still are insecu
to what their ultimate life goals are to be; so they have qu
lot thrown at them . . . " (A. 138-139). Dr. Dietsche test
that perhaps 30 percent of all sociopaths grow out of thei
havior by their middle thirties, even without treatr
(A. 139).

Eddings' third mitigating witness was Dr. Richard R
an Associate Professor of Psychology at Oral Roberts Un
sity in Tulsa, Oklahoma (A. 145), and a consultant to
Oklahoma Department of Institutional and Social Rehab
tive Services (A. 147). Dr. Rettig had interviewed Edc
and reviewed both his psychiatric and psychological recor
well as the record of the certification hearing (A. 146-
Dr. Rettig diagnosed Eddings as "antisocial," meaning
"in his personality development there has been a great de
blockage. He's been unable to develop any mature bas
make judgments [and] often acts out at a level to a five o
or twelve year old child" (A. 149). "I would say, in my
judgment, that his responses appeared to me to be se
years below his chronological age" (*id.*).

Dr. Rettig also expressed the opinion that Eddings' c
tion was "[a]bsolutely treatable" (*id.*), and went on t
scribe various treatment techniques (A. 150). Asked to d
nate the cause of Eddings' personality difficulties, Dr. R
suggested that they "com[e] from that total ambivalen
his childhood, the lack of connectiveness, the lack of be
ingness, the being torn from whatever roots he had in t
of his mother, and a certain significant degree of hostilit
feelings of alienation, developed in my opinion from
childhood experience of no roots" (A. 152).

Eddings' final witness in mitigation was Dr. Anthor
Gagliano, a licensed psychiatrist in private practice in T
Oklahoma (A. 165). Dr. Gagliano interviewed Eddings i

Sapula County Jail.[20] He indicated that Eddi
upset about [his parent's] divorce" when he w
he had always maintained the fantasy that they
ry" (A. 168). His natural mother instead re
liceman from Joplin, Missouri, when Eddings
Eddings responded with "anger, hatred, rebel
loss" (*id.*). Dr. Gagliano told of one incident

> " . . . wanted to impress his mother or
> know why he did it, but he washed down
> he thought it would be nice if the walls w
> his [step-]father walked in, and I think re
> and hit him quite severely with his shoe
> walls."

(A. 170).[21] Dr. Gagliano stated that the incide
"Anger. Hatred" (*id.*).

Dr. Gagliano diagnosed Eddings as suffering
social or a dissocial disorder," characterized b
emotional development at age seven" (A.
inability to display his emotions (A. 169). He st
time Officer Crabtree was shot, Eddings "ac
year old seeking revenge . . . [against] the origi
anger . . . the Policeman who married his mo
stole his mother away" (A. 172). Eddings' dis
treated, Dr. Gagliano thought, though the tr
take "many years — fifteen or twenty years o
therapy" (A. 171).

After the defense had rested and both sides
ing arguments, the court entered oral findings
clusions of law. The court found that Eddings'

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[20] Dr. Gagliano taped the entire interview with E
was introduced into evidence as Respondent's Exh
certification hearing.

[21] Eddings' step-father was killed in a motorcy
months after the marriage (A. 170).

heinous, atrocious and cruel;[22] that the crime h
mitted for the purpose of avoiding or prev
arrest;[23] and, in light of the two utterances of E
Oklahoma Highway Patrol Officers following h
court also found "beyond a reasonable doubt . .
a very strong likelihood that if the Defendant
that he would again commit a criminal act of
would constitute a continuing threat to society"

Addressing the issue of mitigation, the court

> "I think there is some authority in the Sta
> of the Defendant can be considered . . .

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[22] "In this regard, the Court particularly finds tha
heinous crime is concerned, that the definition
searched indicates to the Court that this was
wicked or shockingly evil crime. And this supp
finding insofar as that aspect is concerned. Insof
the Court finds beyond a reasonable doubt that th
atrocious crime. And I specifically find the de
term to be outrageously wicked and vile. Insofa
definition of cruel that I have found indicates tha
signed to inflict a high degree of pain, utter inc
enjoyment of the suffering of others. I find one p
ticular definition to be complied with beyon
doubt, and that is that it was designed to inflict a
pain, and was in utter indifference to the right
Crabtree."

(A. 187).

[23] "In this particular case, the Court finds witho
from the testimony that this Defendant did not
to the authorities in Missouri, or be returned
mother. Or at least to be returned to the person
time charged with his supervision. And there is
the Court's mind but that beyond a reasonable
was committed at that particular time to avoid

"Insofar as a lawful arrest is concerned, of co
feels that there was sufficient evidence to show t
the lights being on the patrol car, and the actual
vehicle, that Trooper Crabtree's intent was to
arrest."

(A. 187-188).

given very serious consideration
fendant when this particular cr
On the other hand, the Cou
entirely by the youthfulness of t
sixteen years old when this hei
ted. Nor can the Court in follow
ion, consider the fact of this yo
ground.

* * *

So not finding any mitigation
ness, and failing to find that it
the aggravating circumstances t
beyond a reasonable doubt, the
in this particular case other thar
Eddings to death. And this will b
ing of this Court."[24]

(A. 188-189).

SUMMARY OF ARG

I

The imposition of a death sentenc
ted by a child below the age of eight
unusual punishment forbidden by th
Amendments. Every objective indica
cietal values points toward repudiatio
a punishment for young offenders. T
fact, witnessed the gradual evolutio
juvenile judicial and correction sys
ciety's growing understanding of the
before the law, and their unique po

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[24] Unlike the capital statutes of many s
§ 701.10 does not specifically enumerat
but instead provides merely that "[i]n
evidence may be presented as to any mi
to any of the aggravating circumstances
Appendix A, *infra*.

The insistence on separate treatment
has coincided with a marked decrease
juveniles executed in this country, es

These evolving societal values are
judgments on capital punishment. In
offenders under eighteen are expressl
statutes; in most other States, the you
enumerated mitigating circumstance.
tional statutes overwhelmingly point
most appropriate legal boundary bet
hood. The ratification of the Twenty-
to the consensus recognizing the spe
eighteen. An overwhelming agreeme
community that children under eigh
execution sheds further light on soci
teme reluctance of contemporary jurie
tences on offenders under eighteen c
use of the death penalty against perso
an atavistic and discredited practice.
learned during the past century abou
the young, their still-incomplete mo
tellectual development during adol
imposition upon them of the most
penal sanction wielded by society wou
of that "human dignity" protected
ment.

II

Petitioner also contends that the t
tors in his case requires that his death
unconstitutionally excessive and dis
tive of the Court's decision on youth
sive mitigating circumstance. Petitio
controverted proof that his mental an
less even than his very young chron
emotionally disturbed youth whose v
cific roots in the tragic neglect and

surrounded his childhood. I
past, petitioner had no seri
and psychologists and psych
incorrigible nor beyond reha

Finally, petitioner asks th
tence because of plain consti
record. Although this point w
decided below, the sentencir
sider relevant mitigating ci
disputable violation of the E
subsequently announced in
(1978).

ARG

**THE EXECUTION OF
THE AGE OF EIGHT
COMMITTED WOULI
ARDS OF DECENCY
PRECEDENT, IN LEC
BEHAVIOR OF CAPI
PORARY VIEWS AN
DREN**

A. Introduction

In *Gregg* v. *Georgia*, 428
Justices Stewart, Powell an
"the death penalty is not a f
er be imposed, regardless of
regardless of the character
the procedure followed in re
The Court nevertheless
punishment is unique in its
"different in kind from any
our system of criminal justi
become a constitutional cor

ness of the death penalty co
ment concern. *Gardner* v.
Lockett v. *Ohio*, 438 U.S. 5
U.S. 625 (1980). In particula
an unconstitutionally excess
Coker v. *Georgia*, 433 U.S.
Georgia, 433 U.S. 917 (197
concluded that capital punis
alty for the crime of murde
fendant possessed a purpose
Lockett v. *Ohio*, 438 U.S. 58
curring in part and dissentin

The issue presented by
Amendment permits the s
death to be imposed upon a j
liberate murder. The Cour
offender's youth as among t
gate against imposing capital
supra, 428 U.S. at 197. See
242, 251 (1976) (sentencin
the defendant's youth argue
tence than might otherwise b
U.S. 262, 273 (1976) (Texas
the age of the defendant' " i
lowing Term, in *(Harry) Ro*
637 (1977) (per curiam), t
which imposed capital punis
convicted of murdering a po
consideration of "[c]ircums
offender." See also *Lockett*
(1978) (mentioning age as
v. *Ohio*, 438 U.S. 637, 640-

The Court has long "[a]s
constitutionally may be tr
Bellotti v. *Baird*, 443 U.S. 62
has cautioned against the ass
should always stand in parity
a very special place in life w
theories and their phrasing

lacious reasoning if
of a State's duty tov
528, 536 (1953) (Fr
the Court has often
this distinction, exp
childhood and adol
perspective, and jud
could be detriment
U.S. at 635. See, *e.g*
("Age 15 is a tende
cannot be judged by
. . . This is the peri
adolescence produc

The question no
methodology of *Gre*
age, which this Cou
nificant — and, in
mitigating factor —
least, youth alone p
severe and unique
Fourteenth Amend
offenders under the
sion of their crimes
alone upon "basic
the [Eighth] Amen
upon objective indi
ards of decency,"
juvenile execution
and precedent, legi
reflected in their s
592, all combine
repudiation of dea
To that evidence,

B. An Historic

1. The commo

At common law
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older, however, w
nal acts. Conseque
turies in England,
— and actually
executed."[26] Sir L
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death, including a
Summer Assizes f
nine-year-old boy
printers' colors wo
suggested that the
actual execution o
phenomenon,[29] w

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[25] 4 W. BLACKST
ENGLAND 23-24 (1
28 (1682).

[26] 1 L. RADZINOV
LAW AND ITS AD
MENT FOR REF
RADZINOWICZ, E

[27] *Id.*, at 12, *citing* F

[28] *Id.*, at 14 n.39 *citi*

[29] Knell, *Capital*
Juvenile Offenders in t
tion in the Eighteenth,
cited as Knell, *Ca*
SAVERS: THE INVI
1977) [hereinafter ci
reports that he had
being sentenced to d
in London. "Of thes
Punishment, at 199.

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The ava
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children[31]
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PARL. HIS

[31] "The r
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Hale, Hawk
(1796) con
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199.

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(1828) (tw
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case arose,
by the trial
SAVERS,
People v.

2. Th

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1823), in
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judgment
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found." *I*

[33] See ge
SCHNEID
YORK ST

[34] Act of
Fox, *Juve*
REV. 118
Perspective

[35] Fox, *I*

> ruption, to deprive them of their remaining sensibility to the shame of exposure, and establish them in all hardihood of daring and desperate villainy? Is it possible that a Christian community, can lend its sanction to such a process without any effort to rescue and save?"[36]

New York's responsive experiment with separate juvenile correctional facilities was quickly adopted in a number of other States.[37] A related development came with the opening of the Chicago Reform School, which rejected New York's large dormitory or "congregate" system in favor of a program structured along familial lines. As its superintendent stated in his first annual report:

> "Our government of the school has been parental. We have labored to introduce as much of the family as possibly [sic] into our management of the school. We have made it our chief aim to fill a father's place to these unfortunate youth . . . The law of kindness has been our role in regulating its discipline."[38]

The philosophy that juvenile institutions should strive to treat children as might surrogate parents saw a judicial parallel

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[36] *Id.* citing Society for the Prevention of Pauperism in the City of New York, Report on the Subject of Erecting A House of Refuge for Vagrant and Depraved Young People (1823).

[37] See, *e.g.*, Act of Mar. 23, 1826, ch. 47, [1826] Pa. Laws 133 (Pennsylvania); Act of Mar. 4, 1826, ch. 182, § 3, [1826] Mass. Laws 327 (Massachusetts).

[38] Fox, *Historical Perspectives*, at 1208, quoting First Annual Report of the Officers of the Chicago Reform School to the Board of Guardians 14-15 (1856). The school's efforts were somewhat short-lived: Fox recounts that judges developed a practice of sentencing only the most incorrigible youth to the school; that an Illinois Supreme Court decision in *People ex rel. O'Connell* v. *Turner*, 55 Ill. 280, 8 Am. Rep. 645 (1870) seriously undercut the limits of the *parens patriae* notion during the next several years; and that the Chicago Fire in 1871 forced the closing of the school. Fox, *Historical Perspectives*, 1215-1221.

in refinement of the theory that the state should stand as *parens patriae* on behalf of wayward children. The most celebrated nineteenth century articulation of this emerging judicial attitude came in *Ex Parte Crouse*, 4 Whart. 9 (Pa. 1839) (per curiam), in which the Pennsylvania Supreme Court rejected a habeas corpus petiton brought by a father seeking release of his child from Philadelphia's House of Refuge:

> "The object of the charity is reformation, by training its inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and above all, by separating them from the corrupting influence of improper associates. To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community?"[39]

Efforts to create separate *correctional* facilities for juveniles and adults blossomed in the late 1890s and early 1900s into the juvenile *court* movement, which swept rapidly across the United States following the enactment in 1899 of the Illinois Juvenile Court Act.[40]

> "The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that a society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent' but 'what is he, how has he become what he is, and

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[39] *Ex parte Crouse, supra*, 4 Whart. at 11.

[40] Illinois Juvenile Court Act, [1899] Ill. Laws 133. On the history of juvenile court movement, see generally PLATT, THE CHILD SAVERS; H. LOU, JUVENILE COURTS IN THE UNITED STATES (1927); Mennel, *Origins of the Juvenile Court: Changing Perspective on the Legal Rights of Juvenile Delinquents*, 18 CRIME & DELINQ. 68 (1972).

> what had best be done in his interest and in the int
> of the state to save him from a downward career.'
> child — essentially good, as they saw it — was to be r
> 'to feel that he is the object of [the state's] care
> solicitude,' not that he was under arrest or on trial.
> rules of criminal procedure were therefore altog
> inapplicable."

In re Gault, 387 U.S. 1, 15 (1968).[41] These lofty principle
the reformers "to a peculiar system for juveniles, unkno
our law in any comparable context" *id.* at 17.[42] The juv
court system was characterized by a lack of formal adve
proceedings, by extensive prehearing investigation c
offender's background and social circumstances, and b
attempt to prescribe for each offender a rehabilitative pro
most fit for his needs.[43]

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[41] As one author has put it, "[t]he critical philosophical positi
the reform movement was that no formal, legal distinctions sh
be made between the delinquent and the dependent or negle
The adolescent who broke the law should not be viewed and tr
as an adult offender . . . He should not be considered an enemy
ciety but society's child who needs understanding, guidance and
tection. The goals of the program are rehabilitation and prote
from the social conditions that lead to crime." Handler, *The Ju
Court and the Adversary System: Problems of Function and Form*,
WISC. L. REV. 7, 9-10.

[42] Even prior to the 1899 Juvenile Court Act, a number of
had enacted certain limited procedural reforms to shield ju
offenders from full participation in the adult criminal proces
PRESIDENT'S COMMISSION ON LAW ENFORCEMENT
ADMINISTRATION OF JUSTICE, TASK FORCE REP
JUVENILE DELINQUENCY AND YOUTH CRIME 2-3 (
[hereinafter cited as PRESIDENT'S COMMISSION, JUVE
DELINQUENCY].

[43] See generally, Paulsen, *Fairness to the Juvenile Offend*
MINN. L. REV. 547-550 (1957); Note, *Juvenile Delinquents: T
lice, State Courts, and Individualized Justice*, 79 HARV. L. RE
(1966).

The *parens patriae* idea implicit in the juvenile court spread quickly. By 1910, at least 34 States had enacted form of juvenile court statute,[44] and Professor Julian could assert that "[t]he past decade marks a revolution i attitudes of the state toward its offending children."[45]

It is well-known that during the succeeding half cen every State has chosen to adopt comprehensive juvenile systems.[46] These systems have been upheld against rep legal attack "on the theory that the state is merely acti *parens patriae* for the youngster's protection in the [same as it does in a guardianship matter and not accusing the with a view to punishment as it does in a prosecutio crime."[47]

These statutory reforms have not come from state islatures alone. In 1950 Congress enacted federal legislati accommodate the special needs of young offenders. The eral Youth Corrections Act,[48] under which federal judge obligated to consider the special sentencing alternatives ated by the Act before sentencing any youth between the of sixteen and twenty-two, was "an outgrowth of recom dations made by the Judicial Conference of the U States," and was expressly "designed to provide a b method for treating young offenders convicted in fe

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[44] RUSSELL SAGE FNDN., JUVENILE COURTS IN UNITED STATES 124(1910).

[45] Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

[46] See *Kent* v. *United States*, 383 U.S. 541, 554 n.19 (1966) rent juvenile statutes in force in each State are cited and summ in S. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUS SYSTEM (2d ed. 1980); see also M. LEVIN & R. S/ JUVENILE DELINQUENCY: A COMPARATIVE ANALYS LEGAL CODES IN THE UNITED STATES (1974).

[47] Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. 547, 549 (1957), and cases cited therein at n.10.

[48] 18 U.S.C. § 5005 *et seq.*

courts in that vulnerable age bracket, to rehabili
restore normal behavior patterns." *Dorszyn*
States, 418 U.S. 424, 432-33 (1974). Congress ha
a separate statutory scheme to cover federal ju
ders under eighteen, the Federal Juvenile Delin
and has dealt with juvenile offenders in other
well.[50] The federal executive branch has co
number of national studies during the past fifty
examining the juvenile justice system and recon
provements.[51]

This evolving special concern for juvenile offe
been reflected in judicial decisions in those Sta
mit their appellate courts to reduce criminal
grounds of excessiveness. Here, the mitigating
has been widely recognized.[52]

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[49] 18 U.S.C. § 5031 *et seq.*

[50] Juvenile Justice & Delinquency Prevention A
U.S.C. § 5601 *et seq.*; Juvenile Delinquency Preventi
Act, 42 U.S.C. § 3801 *et seq.*

[51] See NATIONAL COMMISSION ON LAW
AND ENFORCEMENT: THE CHILD OFFENDER
ERAL SYSTEM OF JUSTICE (1931); PRESIDEN
SION, JUVENILE DELINQUENCY; NATIONA
COMMISSION ON CRIMINAL JUSTICE STAN
GOALS, JUVENILE JUSTICE AND DELINQUE
TION (1976).

[52] *See, e.g.,*: *Alabama: Bracewell* v. *State*, ____ So.2
App. 1980) ("[W]e would likewise direct the trial c
reconsider the imposition of the death sentence wher
circumstances weigh heavily in the appellant's favor
age and the dominance of the husband, her senior b
Id. at ____).

Alaska: Troyer v. *State*, Adv. 2138, 614 P.2d 31
reduces burglary sentence of 18-year-olds becaus
offense); *Ahvik* v. *State*, Adv. 2123, 613 P.2d 125
reduces rape sentence of an 18-year-old because of
family abuse).

Arizona: State v. *Maloney*, 105 Ariz. 348, 464, P.2d
400 U.S. 841 (1970) (court reduces death sentence i
on defendant who killed his parents at age 15. "Tl
committed a heinous crime, the sheer brutality o
tionably shocked the jury . . . His trial testimony on
defense was unbelievable and repulsive. Had he be
the death penalty would have gone undisturbed by t
cause of his immaturity we are persuaded that h
. . . ." *Id.*, 105 Ariz. at 360, 464 P.2d at 805.); *Stat*
Ariz. 183, 261 P.2d 997 (1953) (court reduces rape
feel that the wrong may be ascribed more to the fo
this era of confusion and frustration than to a wick
heart. Defendant was approximately 17 years of age
mature both in judgment and exercise of discretion.
187, 261 P.2d at 1000.)

Colorado: People v. *Cohen*, ___ Colo. ___, 617 P
(court reverses as excessive 20-year second-degr
tence of a 24-year-old with no prior record).

Connecticut: State v. *Comstock*, 25 Conn. Supp. 45
(1965) (court suspends sentence for breaking and e
because defendant was 16); *State* v. *Rodriguez*, 25 C
204 A.2d 37 (1964) (court reduces manslaughter s
because "[t]he defendant has no prior record and is
of age," *id.*, 25 Conn. Supp. at 352, 204 A.2d at 3

Florida: Vasil v. *State*, 374 So.2d 465 (Fla. 1979) (c
year-old defendant's death sentence).

Idaho: State v. *Linebarger*, 71 Ida. 255, 232 P.2d 6
reduces sentence for rape. "[A] boy of *twenty* years
be sent to the penitentiary and his life completely r
71 Idaho at 273, 232 P.2d at 682.)

Illinois: People v. *Wilkins*, 36 Ill. App. 3d 761, 344 N
(court reduces murder sentence. "At the time of tr
was 17 years of age and had no prior criminal record
ing high school and would have graduated but for th
though the nature of the crime is extremely serio
imposed does not adequately reflect the possibility o
rehabilitation." *Id.*, 36 Ill. App. 3d at 767, 344 N.E.
ple v. *Howell*, 16 Ill. App. 3d 989, 307 N.E.2d 1

reduces attempted murder sentence. "D
record, but while in the juvenile system h
completing a course in drafting, and after l
went to the Gateway House, a rehabilitati
felony conviction . . . Many of his problem
an unstable family life and limited job o
App.3d at 994, 307 N.E.2d at 175.)

Kentucky: Workman v. *Commonwealth*, 42
(court reduces sentence of life without pa
tence "shocks the general conscience of so
ble to fundamental fairness. The intent of
with the incorrigible individual who pres
society; incorrigibility is inconsistent with
378); *Fryrear* v. *Commonwealth*, 507 S.W.
true that we have excepted juvenile offend
a sentence to life without benefit of parole.
not whimsical. It was based on the fact that
been labeled as a separate class. We think
one." *Id.*, 507 S.W.2d at 146).

Louisiana: State v. *Sepulvado*, 367 So.2
reduces statutory rape sentence of an 18-y
So.2d 118 (La. 1979) (court reduces conse
robbery and attempted murder where de
first offender with no prior history of viol

Mississippi: Coleman v. *State*, 378 So.2
reduces death sentence of a 16-year-old. "
did the 16-year-old Coleman shoot. Agair
tunity to shoot [the victim's wife], who
not.")

Montana: State v. *Coughlin*, Mont. Senten
7A (1978) (review division reduces sente
the defendant and the recognized chance
v. *Stevenson*, Mont. Sentence Review Di
(review division reduces sentence where
and it is thought that there is a good char
case").

Nebraska: State v. *Stewart*, 197 Neb. 49
(court reduces death sentence of a 16-

whether his age 'excuses' the murder. Ob
fendant has been convicted of premeditat
ing the aggravating and mitigating circum
clude that the defendant's age at the t
absence of any significant criminal recor
the imposition of the death penalty upor
the public will be served and justice do
term of life imprisonment." *Id.*, 197 Neb
865-866.); *State* v. *Hubbard*, 200 Neb. 4
(court reduces robbery and larceny sen
view of youth and lack of substantial pri

New Jersey: State v. *Blanton*, 166 N.J.
(1979) (court reduces sentence for assau
because defendant was onl; 19 years old,
ground and no prior criminal record); *S*
334 A.2d 23 (1975) (court affirms senten
bery because of defendant's age, imm
record); *State* v. *Bess*, 53 N.J. 10, 24
reduces sentence for second degree mur
age, lack of prior record and good family

New York: People v. *Hiemel*, 49 App. Div
(1975) (court reduces sentence for first d
year-old defendant has used time in pris
ample of the rehabilitation heights attaina
al system by an inmate desirous of taki
tional facilities available." *Id.*, 49 App. D
at 731.); *People* v. *Martinson*, 35 App. Di
(1970) (court reduces homicide senter
youth and minor role in crime).

Oklahoma: Ezell v. *State*, 489 P.2d 781 (
reduces murder sentence because evide
fendant was 16 years old); *Bluejacket* v.
217 P.2d 848 (1950) (court reduces ma
of facts where defendant was 18 years o

Pennsylvania: Commonwealth v. *O'Brien*
894 (1980) (court vacates sentence for r
ant when "[t]he lower court made no re
he was required to take into consideratio
appellant's prior criminal record, his age,

To be sure, despite all of t
expressed for youth, there i
of the early goals of the juv
Indeed, "revisionist" critics
tions of the reformers were
benevolent than had long b
and procedures devised exp

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or his potential for rehabilitatio
896); *Commonwealth* v. *Green*
(court vacates death sentence
age is an important factor in d
penalty and should impose upo
ultra vigilant in its inquiry int
derer. That youthful age is an i
ted by the fact that so far as
under the age of 16 years and
years has ever suffered the de
Id., 396 Pa. at 147-148, 151 A

Tennessee: Mattino v. *State*, 53
(court reverses denial of proba
old. "The defendant is a first o
kind and, according to the pr
ment. He comes from a broke
school after the tenth grade . .

[53] "While there can be no do
juvenile courts, studies and c
questions as to whether actua
against theoretical purposes t
process from the reach of co
adults." *Kent* v. *United Stat*
McKeiver v. *Pennsylvania*, 403
COMMISSION ON LAW EN
TION OF JUSTICE: THE CH
SOCIETY 79-81 (1967) [here
MISSION: CHALLENGE OF

[54] *See, e.g.*, PLATT, THE
Juvenile Justice in America:
RIGHTS 63 (1975).

have proven detrimental.[55]
of the juvenile system has
ways. Perhaps most notable
imposing on the juvenile co
due process. *Kent* v. *United*
Gault, 387 U.S. 1 (1967); *I*
but cf. DeBacker v. *Brainard*
Pennsylvania, 403 U.S. 528
insisted that, in imposing th
tend to compromise soci
juvenile offenders. "It is cla
from the special procedure
than offset the disadvantag
normal due process. As we
due process standards, intel
istered, will not compel the
of the substantial benefits
Gault, supra, 387 U.S. at 21
efforts at correctional refo
juvenile offenders have a "
dicially compelled when th
tional facilities.[56]

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[55] *See, e.g.*, RUSSELL SAGE
CY — ITS PREVENTION AN

[56] *See, e.g., Nelson* v. *Heyne*,
417 U.S. 976 (1974); *Creek* v.
1967); *Martarella* v. *Kelley*,
Inmates of Boys Training School
1972); *Wyatt* v. *Stickney*, 344 F
The Right to Treatment and the
(1973); Kittrie, *Can the Right*
Juvenile Process? 57 GEO. L.J
the theory behind the right a
upon a recognition of the concu
sanctioning powers and its assu
sibility. Its implication is that ef
quo for society's right to exerc
870.

But these adjust
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dled in a legal proc
the treatment of a
Indeed, one writer
skeptical critics —
institutions; diverti
cal alternatives"
reaffirms the very
juveniie courts.[58]

3. The impact
attitudes tow

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offenders, hailed e
of the most signifi
tice since the Mag
stantial change in s
capital sentences

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[57] Handler, *The Ju*
Function and Form,
COMMISSION: CH
sion does not conclu
time has come to jett
of children charged
As trying as are the
the criminal courts,
fall heir to much of
and the ideal of sep
ing.")

[58] Schultz, *The C*
DELINQ. 457, 474-

[59] Quoted in Kittr
the Juvenile Process

unlike very young
teenth-century En
to have been spare
ble to adults.[60] The
strate that a preci
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In England, the
prompted, by exp
Royal Commission

> "The Childre
> 16 years of ag
> sentenced to
> detained duri
> which applied
> land, was ext
> Act, 1933, . .
> tion; and was
> inal Justice A
> time when th
> 18 years of ag

In this country, l
ments occurred. Y
number of juvenil
years, although no
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executions were h
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been compiled. Or
the early twentieth
quire that executi
county, authority a

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[60] See pp. 21-22 *sup*

[61] ROYAL COMM
1953. REPORT (H.M

[62] W. BOWERS, E
also *id.* at 40, Table 2
locally imposed, and
through 1960.

The most
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[63] *Id.*, at

[64] "Mos
supplied b
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these data
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Id., at 32.

[65] See B
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1315 (198
Appendix

[66] *Id.*

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1864-1939	
1940-49	
1950-54	
1955-59	
1960-67	
Totals	

B = Black
W = White

Table
execution
date.

Age	Race
16	B
16	W
17	B
17	W
18	B
18	W
19	B
19	W

Examin
ful observ

(1) Th
from the

age 20 were executed during the decade of the 1940s, only 23 (39.7% of the 1940s total) were executed in the 1950s, and only 2 (3.5% of the 1940s total) in the 1960s. The reduction in the total number of adults and juveniles executed during this period, while also marked, was not nearly so steep as for juvenile offenders alone: 1174 persons were executed during the 1940s; 682, (58% of the 1940s total) in the 1950s; and 191 (16% of the 1940s total) in the 1960s. Thus, using either absolute or relative measures, the execution of juveniles was increasingly repudiated during this period.

(2) The execution of *younger* juveniles, those sixteen or seventeen, virtually ceased after the 1940s. Only five 16- or 17-year-olds were executed after 1950, only twelve 16-, 17-, or 18-year-olds during the same period.

(3) A dramatic difference is exhibited in virtually every decade and in every age category between black offenders and white offenders. A total of 146 blacks as compared to 51 whites below age 20 are reported to have been executed during the entire period. Thus, although blacks represented 54.5% of *all* executed offenders classified by race,[67] they comprised 74.1% of those under 20. Only two 16-, 17-, or 18-year old white children were executed after the 1940s as compared to 10 black children of the same ages. In many of the Southern states, virtually every juvenile offender executed throughout the period was black. (See, for example, Alabama, Florida, Georgia and Virginia in Appendix C, *infra*). Following a thorough analysis of the Teeters-Zibulka data on age, race and offense,[68] Professor Bowers observes:

> "[W]e have seen that among some 5,707 persons executed under state authority over the past one hundred years, blacks were . . . younger on the average than whites at execution, whatever their offenses and whether or not they had appeals . . ."[69]

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[67] W. BOWERS, EXECUTIONS IN AMERICA 78, Table 3-1 (1974).

[68] W. BOWERS, EXECUTIONS IN AMERICA 71-107 (1974).

[69] *Id.*, at 102.

It is impossible to say whether the differential treatment of young black offenders reflects in part the influence of race upon decisions by juvenile courts to transfer or relinquish jurisdiction to adult criminal courts.[70] Whatever its causes, a heavy concentration of blacks among those juveniles executed may suggest more widespread acceptance of the death penalty for black juvenile offenders than for juveniles as a whole. Looking only at white offenders, we see from Table Two that no persons under age eighteen have been executed since 1948.

One of the States with the greatest number of executions during the 1864-1967 period, California,[71] did not have information on either age or race accessible to Teeters and Zibulka during the period following 1938. Thus, complete California statistics are not reflected in the Teeters-Zibulka inventory or in our discussion above. However, independent studies of those persons executed in California provide a complementary portrait to the findings on age reflected in the Teeters-Zibulka inventory. One such study reveals that out of a total of 187 persons executed between 1938 and 1963,[72] only one person was under 20 years of age.[73] (Less than two years intervened between sentence and execution for the vast majority

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[70] Studies not focused upon capital offenses in particular have found that race may play a role in juvenile court transfers of serious youthful offenders to adult courts. Keiter, *Criminal or Delinquent: A Study of Juvenile Cases Transferred to the Criminal Court*, 19 CRIME & DELINQ. 528, 531 (1973); Thornberry, *Race, Socioeconomic Status and Sentencing in the Juvenile Justice System*, 64 J. CRIM.L., C. & P.S. 90 (1973).

[71] W. BOWERS, EXECUTIONS IN AMERICA 33-35, Table 2-1 (1974): California had 501 reported executions during the period.

[72] The study does not include data following 1963. However, the Teeters-Zibulka inventory indicates that only one person, Aaron Mitchell, aged 37, has been executed in California since 1963.

[73] Carter, *The Death Penalty in California: A Statistical and Composite Portrait*, 15 CRIME & DELINQ. 62, 66, Table 7 (1969).

of these inmates.)[74] A second study, prepared by the
fornia Department of Corrections, confirms this inform
for the years 1943 through 1963.[75]

To complete our review of the available historical infc
tion, we turn finally to data concerning the ages of
under sentence of death in late 1971, just prior to this C
decision in *Furman* v. *Georgia*, 408 U.S. 238 (1972). Ac
ing to the Justice Department, 14 out of 620 persons un
death sentence on December 31, 1971 were below age
Neither the names, exact ages nor crimes of the offende
indicated in this source. The figure of 14 thus does not r
the number below age 18 who would eventually have
executed, since none of these had exhausted their judici
peals, and none had made final clemency requests to the
spective governors. Other data reviewed would strongly
gest that the total of 14 included a large proportion of 18
19-year olds, a disproportionate number of them black.

While the data above provide, we believe, a reasonab
curate picture of the actual incidence of juvenile execu
during the past 50 to 75 years, it does not purport to in
what greater number of juveniles may have been *senten*
death — though not executed — during this period. We
of no central source from which to obtain such capita
tencing information, but would certainly expect that
tional numbers of sixteen-, seventeen-, and eighteen

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[74] *Id.*, Table 6. 158 out of 187 were executed less than 700 d
ter being sentenced.

[75] CALIFORNIA DEPARTMENT OF CORRECTIONS
SEARCH DIVISION ADMINISTRATIVE STATISTICS
TION, EXECUTIONS IN CALIFORNIA: 1943 THROUGH
Table 2 (1965).

[76] UNITED STATES DEPT. OF JUSTICE, LAW ENF
MENT ASSISTANCE ADMINISTRATION, NATI
PRISONER STATISTICS BULLETIN, No. SD-NPS-CP-1
ITAL PUNISHMENT 1971-72, 43-44, Table 11 (Dec. 1974

olds were given death sentences which were never carri
The reasons why the lives of these juvenile offende
spared are no doubt varied. Yet review of those pu
executive clemency decisions accompanied by expla
indicates that the youth of the offender has ofte
deemed the decisive factor in commuting or reducir
death sentences and lesser sentences. In one influenti
treatise on clemency,[77] the critical role of youth in cl
decisions was made clear:

> "*Age* is so entwined with all criminality and puni
> that it cannot well be eliminated. Youth is so fre
> involved with character, criminal intent, guara
> employment, degree of punishment, and the que
> moral guilt that it must be given weight."[78]

Discussing capital cases, the treatise grouped extreme
(or age) together with "weak mentality" and "extrao
provocation" as among those exceptional circumstanc
calling for the exercise of clemency:

> "There are capital cases in which the circumsta
> the commission of the crime, or the qualities, or t
> dition of the culprit, although legal guilt is undou
> once signal a middle ground and in which the tho
> the extreme penalty shocks the average mind . .
> a case presents features which induce such a s
> mind there can be no doubt that as to the punish
> least the case is exceptional and that natural equ
> for its modification. Nor can action to that en
> misinterpretation of the people's will. Cases of e
> youth or age, weak mentality, extraordinary prov
> or other extenuating circumstances . . . belong
> class."[79]

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[77] W. SMITHERS, TREATISE ON EXECUTIVE CLEMEN
PENNSYLVANIA (1909).

[78] *Id.*, at 170.

[79] *Id.*, 126-27. *See also* Barnett, *The Grounds of Pardon,*
L.REV. 205 (1927). Carl Sandburg has written eloque
Abraham Lincoln's many decisions granting executive pardo

A review of actual clemency decisions strong
this principle has guided many commutations
century.[80] Systematic studies of the clemenc
force the impression that youth plays a majo
minations to commute. One study of 232 pe
death sentences between 1907 and 1960 in th
Jersey reveals that "[t]he youngest age group
through 19] . . . whether compared to the
group (20 to 24 years) or to all other age gro
shows a significantly higher rate of commutati

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ing the Civil War, often on the ground of youth.
ABRAHAM LINCOLN: THE WAR YEARS, ch.
(1954).

[80] Many governors commute without written or p
randa, or without stating reasons. Among thos
reasoned decisions have been preserved, the followi
tative:

CALIFORNIA: REPRIEVES, COMMUNICATIO
DONS BY GOV. C. C. YOUNG, 1929-1930, 14-2
Ellis: death sentence commuted to life. Though shov
trial to be 18, he presented evidence to the Governo
he was possibly 17 at the time of the crime, thereby
mum statutory age for capital punishment in Califo
crime itself there are no extenuating circumstances,
of the defendant and the effect of association with tw
may be considered such."); *id.*, 33-35 (Joseph Tr
tence commuted to life. "Extreme youth" one fac
OF THE GOVERNOR CONCERNING PARDON
TIONS AND REPRIEVES GRANTED BY GOV.
JR. FOR PERIOD 1931-1933, 148-149 (1933
Nuchols: sentence for second degree murder co
served. "At the time he committed his offense, h
gling kid [16] from Tennessee, without any folks a
California a stranger, and tried a holdup to gai
excited and shot his victim, who died from the w

COLORADO: REPORT OF THE STATE BOARI
1893-1894, 23 (Frank Valentine: life sentence for
"because: First—The murder was planned by oth

tioner. Second—His youth at the time being a mer
of the one who committed the crime."); REPORT
BOARD OF PARDONS, 1895-1896, 21 (Henry
rape pardoned. "Pardon recommended for the f
First—Because of the many mitigating circumstanc
boy being eighteen years of age and the woman
time of the alleged commission of the offense, an
was often induced by the woman and an older s
earnings for drinks for them."): REPORT OF THE
OF PARDONS, 1905-1906, 67 (Joseph Lee Car
murder pardoned. "Prisoner was but a young b
drawn into a quarrel with a boy, and, being in a st
getting the worst of it . . . and in desperation he dr
knife, as he believed in defense of his life, and sta
ion, the stab resulting fatally later on.")

CONNECTICUT: Benjamin Reid: death sentence
"Some of the other factors were that Reid was a n
mental capacity, of a sordid, deprived background.
Clemency in Capital Cases, 39 N.Y.U. L. REV. 13
(1964) (Governor commuted without written opin

MASSACHUSETTS: H. BEDAU, THE DEATH
AMERICA: AN ANTHOLOGY, 426-427 (Anchor
early as 1900, Hosea M. Knowlton, then attorney
chusetts, recommended the commutation of the d
seventeen-year-old whose crime was particularly
ground that Massachusetts public sentiment woul
execution of so young a boy. . . . [In the 1940s], i
volving a seventeen-year-old boy, another Massach
the initiative and accepted a plea of guilty to second
on the ground that no Massachusetts governor wo
youthful an offender to be electrocuted.")

NEW YORK: MESSAGE OF THE GOVERNOR T
THE STATEMENTS OF THE PARDONS, C
AND REPRIEVES GRANTED DURING THE
(William H. Green & Louis King: 60 years for mu
time served. 18 and 17 respectively at the time of th
driver during a robbery. "In accordance with [the
of the Parole Board] and in view of the youthful
King at the time of the crime and their good condu
muting . . . to time served."); MESSAGE OF T

New Jersey may not be atypical. Its tr
age group . . . is essentially like tha
and Pennsylvania."[81]

TRANSMITTING STATEMENTS OF
MUTATIONS AND REPRIEVES GR
YEAR 1972, 6 (Jose Crespo: sentence of
murder commuted. "The crime was
Crespo, then 17 years old and a member
killed a member of a rival gang. Mr. Cresp
13½ years; over the course of his imprisor
substantial character transformation, dem
ademic and vocational achievements. Du
has obtained a high school equivalency di
ma, completed college courses in Englisl
tory, succeeded in becoming a fully compe
served as an academic teacher to his fello
of the Wallkill Correctional Facility Jayce
ordained a minister in the Samaria Evan

OHIO: ANNUAL REPORT OF THE C
ENCY, 1923-1924, 27 (Hilbert V. Sodd
degree murder; clemency recommended
Sodders, with two companions, . . . atten
saloon. In the melee which ensued, [a co
tor of the place from the effects of which
The three, all young fellows just beyond t
prehended and first degree convictions
Sodders escaped, lived an exemplary life

[81] Bedau, *Death Sentences in New Jerse*
L. REV. 1, 25 (1964). Bedau also notes

> "Prior to 1958-1959, there had bee
> the New Jersey Legislature since 19
> alty with imprisonment; that one eff
> the execution of a teen-age boy. The
> to death between 1907 and 1960,
> was electrocuted on January 5, 19
> also the youngest person executed.
> No. 64, calling for the abolition of
> substitution of life imprisonment,
> the Senate by a vote of 11 to 1, but
> the Assembly by a vote of 29-20."

Id., at 24.

The cited Pennsylvania study foll
ing death sentences in Pennsylvania
Of the 407 for whom age was knov
commutations. Among youth aged
numbers are small, 50 percent recei
other study of 660 persons who w
prison in North Carolina between 1
changes during the 1909-1954 peri
recurring in governors' statements i
of death sentence."[85] This study
course of the half-century, age play
cant role in commutation decisions:

> "As shown by Table 4, there h
> portion of commutation staten
> evidence in the case as justifyin
> cite the support of responsible
> which note requests from citize
> cy. *On the other hand, an increas*
> *tion statements point to age* or un
> offender."[86]

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[82] Wolfgang, Kelly and Nolde, *Compa*
Commuted Among Admissions to Death
P.S. 301 (1962).

[83] *Id.*, at 305. Wolfgang et al. note that
even though having committed a hein
tenced to death." *Id.*, at 302.

[84] Johnson, *Selective Factors in Capit*
FORCES 165 (1957).

[85] *Id.*, at 167, Table 4. (This Table is an

[86] *Id.*, at 168 (emphasis supplied). See
ment in Oregon, 1903-64, 45 ORE. L. R
ally, the youth of the murderer increases
tion. In other states, evidence shows th
had an even chance of commutation, s
Table VIII suggests this holds true in O

Our historical review s
Concurrently with the gra
States over the past century
juvenile offenders belong i
arate correctional facilities
parens patriae pursuant to
marked decline in the nur
penalty of death. Among
punishment has been virtu
since the 1940s; and even
quently imposed. Special co
jor theme of appellate sen
clemency decisions as well

C. Contemporary Legisl

Following this Court's le
U.S. at 592, and *Gregg* v.
next look to "legislative a
evolving standards on the
juveniles. Beginning with t
we note that at least six o
valid statutes have enacted
tion of young people.[87] Mo
specifically enumerate miti

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[87] CAL. PENAL CODE § 1
COLO. REV. STAT. § 16-11
GEN. STAT. ANN. § 53a-46
ILL. REV. STAT. ch. 38, § 9
18); NEV. REV. STAT. § 17
TEXAS PENAL CODE ANN
1981)(under 17).

[88] A number of States, incl
nois, Oklahoma, South Dako
mitigating circumstances by s
tion of any relevant mitigatin

[89] 1981 ALA. ACTS, §
703G.5(Supp. 1980); ARK
1979); CAL. PENAL CODE

(or apparently all but India
have designated an offend
factor.

Beyond the capital statut
tion establishing juvenile c
ment of society's evolvin
ders. Among the 50 States,
years as the appropriate

REV. STAT. ANN. § 16-11
STAT. ANN. § 53a-46a(f) (W
§ 921.141(6)(g) (West Supp.
(b)(8)(Supp. 1980); LA.
905.5(f)(Supp. 1981); M
§ 413(g)(5)(Supp. 1980)
101(6)(g)(Supp. 1979); MO.
1981); MONT. REV. CODES
REV. STAT. § 29-2523(2
§ 200.035(6)(1979); N.I
II(b)(5)(Supp. 1979); N.M.
1980); N.C. GEN. STAT. §
CONS. STAT. ANN. § 1311(e
3-20(c)(b)(7)(Supp. 198
2404(j)(7)(Supp. 1980): UTA
1979); VA. CODE § 19.2-26
ANN. § 6-4-102(j)(vii)(Supp.

[90] IND. CODE ANN. § 35-5

[91] N.Y. PENAL LAW § 12
open the possibility of a ma
category of homicide. In *Peopl*
735 (1977), the New York Co
with this possible exception.
that time.

[92] VT. STAT. ANN. tit. 13, §
predates this Court's opinion
(1972) and does not provide
have been no prosecutions ur

[93] ALA. CODE § 12-15-1(3
10-010(a)(Supp. 1979); ARIZ
ARK. STAT. ANN. § 45-406.

jurisdiction. One
specify age 17, an

CODE § 300 (West
103(3)(1978); DEL
FLA. STAT. ANN.
STAT. § 571-11
1802(c)(Supp. 198
1979); IOWA COD
§ 38-802(Supp. 198
1980); ME. REV. S
MD. CTS. & JUD.
STAT. ANN. § 260.
21-5(c)(Supp. 1979
NEB. REV. STAT.
§ 62.020(2)(1979);
1979); N.J. STAT.
ANN. § 32-1-3(A)
02(1)(Supp.
§ 2151.01.1(B)(1)(S
§ 1101(a)(Supp. 19
1980); R.I. GEN.
COMP. LAWS § 26
202(1)(Supp. 1980
1979); VA CODE
CODE ANN. § 13.
§ 49-5-1(a)(1980);
1980).

[94] WYO. STAT. A

[95] GA. CODE A
ch. 37 § 702-2(
§ 13.1569(3)(Supp.
(Supp. 1981); MI
1981); MO. REV. S
20(c)(Supp. 1980)
1980).

[96] CONN. GEN.
FAM. CT. ACT
STAT. § 7A-517(1
§ 632(a)(1)(Supp.

model standards
which set 18 as th

Concededly, a
the waiver of juv
rent jurisdiction b
juvenile offender
ders under 18 are
nal processes und
sus reached amor
propriate general
tant evidence su
may be chosen to

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[97] UNITED STA
TION & WELFA
DREN'S BUREA
FAMILY COURTS
courts over many y
level [18 years] of j
COMMISSIONERS
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ment policies, 73 of 91 countries reporting a minimum age for execution required the offender to be at least 18 years old.[104] Subsequent reports of the Secretary General of the United Nations confirm that "[t]he great majority of Member States report never condemning to death persons under 18 years of age."[105] The statutes of virtually all of the Western and Eastern European countries which permit capital punishment in peace time[106] nevertheless prohibit execution of persons under age 18.[107]

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[104] Patrick, *The Status of Capital Punishment: A World Perspective*, 56 J. CRIM. L., C. & P.S. 397, 410 and Table 1, 398-403 (1965). The countries Patrick lists as permitting executions of juveniles under 18 include: Afghanistan, Central African Republic, Ceylon, Cyprus, Finland, Ghana, Haiti, India, Ireland, Republic of Korea, Laos, Liberia, Malaya, Nepal, Territory of New Guinea, Nigeria, Pakistan, and the Union of Soviet Socialist Republics. Patrick notes that several of the countries which have set minimum ages below 18 follow the English common law; he adds: "[I]t again must be recognized that what is possible by law may be highly improbable by custom or practice." *Id.*, at 410.

[105] UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE SECRETARY GENERAL, CAPITAL PUNISHMENT 10 (1973); see also UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE SECRETARY GENERAL, CAPITAL PUNISHMENT (E/5616)(1975); UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE SECRETARY GENERAL, HUMAN RIGHTS QUESTIONS, CAPITAL PUNISHMENT (E/1980/9)(1980) [hereinafter cited as U. N. SEC. GEN. 1980 REPORT]. In a table appended to his 1980 report, the Secretary General indicates that among the 62 nations responding during the years 1974-1978, 343 persons age 18 or older were reported executed, while no person under age 18 was reported executed. *Id.*, Table 1, 17-18.

[106] The following European countries altogether prohibit capital punishment in peacetime, either by constitutional provision or by statute: Austria, Denmark, Federal Republic of Germany, Finland, Great Britain, Iceland, Italy, Luxembourg, Malta, The Netherlands, Norway, Portugal, Spain, Sweden, and Switzerland. U.N. SEC. GEN. 1980 REPORT, Annex, at 6.

[107] Belgium: LES CODES LARCIER, CODE PENAL, ch. VIII, 77; Bulgaria: DAS BULGARISCHE STRAFGESETZBUCH VOM

The consensus of the international community against the execution of juveniles under age 18 is reflected as well in the provisions of two human rights covenants. The International Covenant on Civil and Political Rights[108] contains an express provision that a "[s]entence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."[109] The American Convention on Human Rights[110] similarly provides that "[c]apital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age . . ."[111]

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16 MAERZ 1968 (NAKAZATELEN KODEKS, Art. 38(2)(1973)(20 years); Czechoslovakia: PENAL CODE OF 1961, § 29(3), trans. in Solnar, *The Conditions of Criminal Liability Under the New Czechoslovak Penal Code of 1961*, 20 BULL. CZECHOSLOVAK LAW 1, 67-68 (1962); France: C. PEN., art. 66 (under some circumstances, 16 years); German Democratic Republic: STGB. DDR. §§ 60(2), 65; Hungary: CRIM. CODE OF HUNG. PEOPLES REPUB. § 39.(1), trans. in 1 HUNG. L. REV. 25, 34 (1980)(21 years); Poland: PEN. CODE OF THE POLISH PEOPLE'S REPUB., art. 31, (trans. by W. KENNEY & T. SADOWSKI 1973); Romania: PEN CODE OF THE ROMANIAN SOCIALIST REPUB. art. 54 (trans. by S. KLECKNER 1976)(20 years); Turkey: TURKISH CRIM. CODE, ART. 55.1 (trans. by N. GURELLI 1980); USSR: SOVIET CODES OF LAW, art. 23 (W. SIMONS ed. 1980). *But cf.* Greece: GREEK PEN. CODE, arts. 121, 122, 127 (trans. by N. LOLIS 1973) (17 years).

[108] International Covenant on Civil and Political Rights, *entered into force* March 23, 1976, G.A. Res. 2200A, 21 U.N. GAOR, supp. (No. 16) 49, 52, U.N. Doc. A/6316 (1967).

[109] *Id.*, art. 6(5).

[110] American Convention on Human Rights, *entered into force* July 18, 1978, O.A.S. Doc. OEA/SER. K/XVI/1.1 Doc. 65 (1970), *reprinted in* [1969] YEARBOOK ON HUMAN RIGHTS 390 (United Nations).

[111] *Id.*, art. 4.5

Both covenants have been ratified by numerous coun
the International Covenant by at least 60,[112] the Ame
Convention, by 14.[113] On June 1, 1977, President Ji
Carter signed the American Convention,[114] and on Octo
1977, he signed the International Covenant.[115] Both
transmitted to the Senate for advice and consent on Feb
23, 1978, together with certain proposed reservations an
derstandings.[116] The Senate has not yet formally ratified
covenant.[117]

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[112] *International Human Rights Treaties: Hearings Before the*
Comm. on Foreign Relations, 96th Cong., 1st Sess. 520 (
[hereinafter *"Senate Treaties Hearings"]*

[113] *Id.* at 506.

[114] *Id.*

[115] *Id.* at 520.

[116] *Id.* at 506, 520. See generally Weissbrodt, *United States Ra*
tion of the Human Rights Covenants, 63 MINN. L. REV. 35 (
Among the reservations to the International Covenant was one
cent to the clause on execution of juveniles stating: "The U
States reserves the right to impose capital punishment on any p
duly convicted under existing or future laws permitting the in
tion of capital punishment." *Senate Treaties Hearings*, at 522. A
nent reservation to the American Convention reads: "United
adherence to Article 4 is subject to the Constitution and other
the United States." *Id.* at 508. In response to sharp criticism o
reservations by the Lawyers' Committee for International H
Rights, see *id.* at 48-50, the Department of State remarked:
purpose of that reservation, like the other reservations, is to
the assumption of an international obligation to meet certain
ards which U.S. domestic law does not currently meet. Its p
was certainly not the preservation of any right to execute chil
pregnant women, something never done in the United States.
55.

[117] See generally *Report of the Committee on International*
Rights, United Nations Human Rights Covenants, 36 THE RE
of the Association of the Bar of the City of New York 21
1981).

In sum, the relevant evidence of legislative attitude
the state, federal and international levels — points c
cingly to 18 as the minimum age below which executic
youthful offender would be offensive to contemporary
ards of human decency.

D. The Response of Capital Juries

The third source to which we look to ascertain cont
rary societal standards regarding capital punishme
juveniles is "the response of juries reflected in their se
ing decisions." *Coker* v. *Georgia, supra,* 433 U.S. at 59
fortunately, little helpful information about the ages
sons sentenced to death appears to have been collecte
tematically since this Court's opinion in *Furman* v. *G*
The annual reports on capital punishment prepared by t
partment of Justice contain some information on ag
until 1974, sentences of all offenders "under 21"
grouped together.[118] Since 1974, the lowest age groupi
ported for all offenders has been "under 20 years."
most recent report available shows that among 567 off
under sentence of death as of December 31, 1979, eleve
percent) were in the "under 20 years" category.[120] By
parison, 145 (25.5 percent) were in the next oldest age
ry, from 20 to 24 years; and 151 (26.6 percent) were in t
category from 25 to 29 years.

To update and clarify these figures, we have cor
prison authorities and other knowledgeable sources in

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[118] *See, e.g.,* UNITED STATES DEPT. OF JUSTICE, LA
FORCEMENT ASSISTANCE ADMINISTRATION, NATI
PRISONER STATISTICS BULLETIN, NO. SD-NPS-CP-2,
ITAL PUNISHMENT 1973 26, Table 7 (March 1975).

[119] *See, e.g.,* UNITED STATES DEPT. OF JUSTICE, BU
OF JUSTICE STANDARDS, NATIONAL PRIS
STATISTICS, NCJ-70945, CAPITAL PUNISHMENT 1979
ble 29 (Dec. 1980).

[120] *Id.*

State with offenders presently under senten
order to obtain information on all offenders ag
at the time of the commission of their crimes.
of May 1, 1981, are presented in Table Three b

TABLE 3

**Juveniles Under Sentence of Death By
At Time of Commission of Crime,
As of May 1, 1981**

Age	B	W	H	N
15	0	1	0	
16	3	2	0	
17	7	4	0	
18	9	3	1	
19	14	15	3	

W = White
B = Black
H = Hispanic
NA = Native American

The total number of offenders currently un
death for crimes committed while they were le
old thus appears to be 17 (2.1 percent) of the t
population of 794.[122] The total number of juve
to death for crimes committed while 16 or yo
as young as petitioner Monty Eddings — is 6.
of one percent of the current condemned popu

[121] A full listing of all condemned persons below
us as of May 1, 1981, grouped by age, name, race,
as Appendix E *infra*.

[122] NAACP LEGAL DEFENSE AND EDUCA
INC., DEATH ROW U.S.A. 1 (April 20, 1981).

[123] The State of Oklahoma, where petitioner Edd
tion, has apparently never executed anyone under
18-year-old was executed in Oklahoma in 1933, ar

One additional factor of significance clear
that, while blacks currently comprise 40.5 pe
demned population,[124] they represent 10 of th
juveniles under 18 (59 percent), continuing t
representation of young blacks on death rows
ing the general overrepresentation of blacks i
their numbers in the population), a pattern w
figures from previous decades.[125]

The numbers also suggest that juries and s
are reluctant to impose the death penalty on
deed, a notable increase appears when one e
recent Department of Justice figures[126] to c
number of condemned inmates under age 2(
with the numbers for older inmates (ages 20-
29, 151).[127] Apparently, only when offenders
twenties does society's impulse to shield the
full harshness of its most extreme crimin
abate.[128]

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in 1937. The remainder of the 83 persons executed
1915 were at least 20 years old. W. BOWERS, E
AMERICA, 343-345 (1977).

[124] NAACP LEGAL DEFENSE AND EDUCA
INC., DEATH ROW, U.S.A. 1 (April 20, 1981).

[125] See discussion at 38-39 *supra*.

[126] We were unable, within the time permitted
this brief, to obtain individual age information on
30 who were under sentence of death as of May 1,
reason, however, to doubt the reliability of the mo
Prisoner Statistics figures for 1979, or to believe th
of condemned persons in the various age brac
altered significantly in the eighteen months sinc
published.

[127] UNITED STATES DEPT. OF JUSTICE, B
TICE STANDARDS, NATIONAL PRISONER S
70945, CAPITAL PUNISHMENT 1979, 72, Tabl

[128] It is not likely that scarcity of death sentences
under age 18 simply "reflect[s] the humane feelin

E. Conclusion

All the indicia of contemporary stan
tory and precedent, legislative enactm
— demonstrate a rejection of the dea
able societal response to juvenile c
murder. Our society has learned toc
century about the special nature of cl
lent developmental pressures which p
as well as about the encouraging
possessed by many disturbed young
them its most terrible and final punis
ern history of juvenile justice argues
response, even for outrageous and u
havior.

Yet these objective factors do not
for "the Constitution contemplates th
ment [of this Court] will be brought t
the acceptability of the death pen
Amendment," *Coker* v. *Georgia, supr*
sue is whether the execution of juver

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revocable of sanctions should be reserve
treme cases." *Gregg* v. *Georgia, supra,* 4
when Oklahoma's present statute was ena
have committed homicides far more ag
tioner Eddings, and with fewer mitigati
State v. *Jimmy Derrell Scott,* No. CRF
Cty.) (Defendant was 17 when he kidnap
same night, robbed both, killed one afte
and abandoning victim on roadside;
exchange for a plea on Nov. 2, 1977; *Stat*
79-4516 (Dist. Ct. Okla. Cty.) (Defend
sodomized and murdered an elderly wor
ing burglary of her residence; received lif
plea); *State* v. *Quintus Lamar Kezzec,* N
Okla. Cty.) (Defendant was 16 when he
old jewelry dealer with .22 pistol; receiv
these more extreme cases was a death

basic concept of human dignity at
ment." *Gregg* v. *Georgia, supra,* 428

Surely it does not. The Eighth A
the extreme sanction of capital puni
consideration of "compassionate or
ming from the diverse frailties of h
North Carolina, supra, 428 U.S. at
unique frailties of youth are universa
to the proper disposition of children
of all degrees of seriousness, it is sim
concept of human dignity embodie
ment could tolerate the execution o
Some minimum age of susceptibilit
death must be recognized by a cons
decency will fix the outer boundaries

The problem, of course, here as el
of constitutional law, resides in drawi
15, 18, 20? The inevitability of the di
is endemic to a Constitution that has
the vagaries of isolated juries and
exclusively and irremediably the st
science. And if a line must be drawn
the appropriate place to draw it is at
to the present subject than in many
overwhelming concentration of the
scribed above fixes age 18 as the
sibility with a clarity that is not mer
pelling when the gravest penal sanct
to be exacted of its youth.

II

THE EXECUTION OF PETI VIEW OF THE OVERWHELM CUMSTANCES IN HIS CASE EXCESSIVE AND DISPROP MENT FORBIDDEN BY TH TEENTH AMENDMENTS

In the present case, however, the
question whether the execution of ch

invariably cruel and unusua
sentence of death can and sh
Amendment as excessive a
"relevant facets of the ch
dividual offender [and] the
offense." *Woodson* v. *North*
The Court has long recogn
punishment for crime shou
to offense," *Weems* v. *U*
(1910); and the Court has
claims that a particular dea
proportionate, *see, e.g., Woo*
U.S. at 305 n.40; *Lockett* v.
Bell v. *Ohio, supra,* 438 U.S
—— U.S. ——, 49 U.S.L.W
1981)(No. 79-6740), althou
required to decide those cla

Here, petitioner Eddings
dence of at least three fac
overwhelmingly mitigate
barely sixteen at the time
the uncontradicted testimo
gist at Oklahoma's Easter
age "was far younger," "
three months [to] fourteen
Richard Rettig, an Associa
Roberts University, concur
"in [his] best judgment . .
me to be several years belo
"He's been unable to deve
ments [and] often acts out
year old child" (*id.*). Thu
act of a very young juven

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[129] The trial judge's reports
that Monty Eddings' birthdat
sixteen years and four month

and emotional age made h
outlook. This Court, as w
repeatedly identified the y
most significant mitigating

Second, this record is re
act stemmed in large part f
his chaotic childhood and
anger with which Eddings r
President's Commission o
ministration of Justice coul
Eddings when it set forth
delinquency:

> "He is 15 or 16 years
> — perhaps representin
> live with their mother
> female-centered. It m
> had a resident father.
> grownup man well en
> emulating him. From
> charge of him he has
> perhaps indifference, i
> sion. All his life he ha
> and by now his mothe
> and goings, little way
> policeman brings him
> the mail."[131]

Admixed into this formu
an additional ingredient —
his father (A. 113) and by
liceman (A. 170). Eddings'
and morally unacceptable,

> "Clinical experience h
> been exposed early in

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[130] See pages 19-20 *supra*.

[131] PRESIDENT'S COMMIS
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ter of learning
but because
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immature to w
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against impuls
which may lea
reactions — o

The Model Pen
merous states[134] ha
cance of actions c
tional disturbance.
treme emotional t
homicidal act, *Goe*
(1980); see also *B*
tional instability")
U.S. at 637 ("extr
this case, substan
persuasively sugge
rational deed of a
uncalculated resp
rooted, explosive
proved too immat

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[132] K. MENNING
(1966). See also th

[133] AMERICAN
§ 210.6(4)(b) (Prop

[134] See Liebman
Beyond the 'Boiler P
66 GEO. L.J. 757,
158.

Eddings' violer
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or dangerous.

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446 U.S. at 425 (
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§ 701.13
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Alabama,
supra, 43
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[135] Unde
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there is some statutory authority in the State that the age of a Defendant can be considered.

" . . . I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty. On the other hand, the Court cannot be persuaded entirely by the youthfulness of the fact that the youth was sixteen years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*

• • •

"*So not finding any mitigation other than the youthfulness,* and failing to find that it has sufficiently softened the aggravating circumstances that the Court has found beyond a reasonable doubt, the Court has no alternative in this particular case other than to sentence Monty Lee Eddings to death."

(A. 188-189) (Emphasis supplied).

As reported more fully in the Statement of Facts,[136] there had been substantial mitigating evidence presented by petitioner Eddings' counsel at the sentencing hearing concerning Eddings' "violent background," which the trial judge thus believed himself obliged by law to disregard. This included testimony that after Eddings' parents' divorce, his mother had become an apparent alcoholic and prostitute (A. 110); that Eddings was beaten by his policeman step-father (A. 170); that his natural father, an "authoritarian," often beat him, slapped him (A. 113), and engendered in him feelings of bitterness, hostility and fear (*id.*); that he developed a psychological condition, in part because of these events (A. 171); and that his fatal outburst against Patrolman Crabtree was psychologically precipitated in some measure by this violence in his own past (A. 172).

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[136] See pages 13-19, *supra.*

Unquestionably, this evidence points to "special facts about this defendant that mitigate against imposing capital punishment," *Gregg* v. *Georgia, supra,* 423 U.S. at 197. *See, e.g. (Harry) Roberts* v. *Louisiana, supra,* 431 U.S. at 637 (describing evidence of "emotional disturbance" as mitigating, in addition to evidence of "youth"); *Bell* v. *Ohio,* 438 U.S. 637, 641 (1978) (referring to evidence of Bell's mental, emotional and drug problems); *Godfrey* v. *Georgia, supra,* 446 U.S. at 424 n.3 (1980) (referring to evidence of Godfrey's prior hospitalization for drinking problems); see generally, Liebman & Shepard, *Guiding Capital Sentencing Discretion beyond the "Boiler Plate": Mental Disorder as a Mitigating Factor,* 66 GEO. L. J. 757 (1978). The circumstances of Eddings' stormy childhood and adolescence, in short, were clearly "relevant evidence" on "why a death sentence . . . should not be imposed," *Jurek* v. *Texas, supra,* 428 U.S. at 271; and their consideration by the trial court was "a *constitutionally indispensable* part of the process of inflicting the penalty of death." *Woodson* v. *North Carolina, supra,* 428 U.S. at 304 (emphasis supplied).

There is no way to ascertain from this record whether, had the trial judge felt legally free to consider such evidence, he might have reached a decision to impose a life sentence. His express statement that, "in following the law, [he could not] . . . consider the fact of this young man's violent background" manifestly "creates the risk that the death penalty [was] imposed in spite of factors which may call for a less severe penalty." *Lockett* v. *Ohio, supra,* 438 U.S. at 605. Petitioner Eddings' death sentence should therefore be vacated under *Lockett. See, e.g., Green* v. *Georgia,* 442 U.S. 95 (1979) (per curiam); *Gardner* v. *Florida,* 430 U.S. 349 (1977); *Andres* v. *United States,* 333 U.S. 740, 752 (1948); *Calton* v. *Utah,* 130 U.S. 83, 86-87 (1889); *cf. Stromberg* v. *California,* 283 U.S. 359, 367-68 (1931); *Street* v. *New York,* 394 U.S. 576, 587-88 (1969).

CONCLUSION

The judgment of the Oklahoma Court of Criminal App
affirming petitioner's sentence of death should be revers

Respectfully submitte

JAY C. BAKER
1850 South Boulde
Tulsa, Oklahoma 7
Court-appointed Couns
for Petitioner

IN THE

Supreme Court of the United State

OCTOBER TERM, 1980

No. 80-5727

MONTY LEE EDDINGS, *Petitioner,*

v.

STATE OF OKLAHOMA, *Respondent.*

APPENDICES

APPENDIX A

STATUTORY PROVISIONS INVOLVED

Okla. Stat. Ann. tit. 21, § 701.9

§ 701.9—Punishment for Murder

A. A person who is convicted of or pleads nolo contendere to murder in the first degree punished by death or by imprisonment for life.

Okla. Stat. Ann. tit. 21, § 701.10

§ 701.10—Sentencing Proceeding Murder in Degree

Upon conviction or adjudication of guilt of a d of murder in the first degree, the court shall c separate sentencing proceeding to determine wh defendant should be sentenced to death or life i ment. The proceeding shall be conducted by judge before the trial jury as soon as practica presentence investigation. If the trial jury l waived by the defendant and the state, or if th ant pleaded guilty or nolo contendere, the s proceeding shall be conducted before the cou sentencing proceeding, evidence may be preser any mitigating circumstances or as to any of the ing circumstances enumerated in this act. Only dence in aggravation as the state has made kno defendant prior to his trial shall be admissible. l this section shall not be construed to authoriz troduction of any evidence secured in violati Constitutions of the United States or of the Oklahoma. The state and the defendant or hi shall be permitted to present argument for or ag tence of death.

Okla. Stat. Ann. tit. 21, § 701.11

§ 701.11—Instructions — Jury findings of aggra cumstances

In the sentencing proceeding, the statutory tions as determined by the trial judge to be war

the evidence shall be given in the charg
the jury for its deliberation. The jury,
unanimous recommendation of death,
writing, signed by the foreman of the
aggravating circumstances or circum
unanimously found beyond a reasonat
jury cases, the judge shall make such d
at least one of the statutory aggravat
enumerated in this act is so found or
any such aggravating circumstance is
finding of one or more mitigating c
death penalty shall not be imposed. I
within a reasonable time, agree as to
judge shall dismiss the jury and imp
imprisonment for life.

Okla. Stat. Ann. tit. 21, § 701.12

§ 701.12—Aggravating Circumstances

Aggravating circumstances shall be:

1. The defendant was previously co
involving the use or threat of violenc

2. The defendant knowingly creat
death to more than one person;

3. The person committed the mur
tion or the promise of remuneration
other to commit the murder for rer
promise of remuneration;

4. The murder was especially hein
cruel;

5. The murder was committed f
avoiding or preventing a lawful arrest

6. The murder was committed by a
ing a sentence of imprisonment o
felony; or,

7. The existence of a probability
would commit criminal acts of violen
stitute a continuing threat to society.

Okla. Stat. Ann. tit. 21, § 701.13

§ 701.13—Death Penalty — Review of

A. Whenever the death penalty is i
the judgment becoming final in the t
tence shall be reviewed on the record
Court of Criminal Appeals. The clerk
within ten (10) days after receiving t
transmit the entire record and transcri
Court of Criminal Appeals together
pared by the clerk and a report pre
judge. The notice shall set forth the titl
ber of the case, the name of the defen
and address of his attorney, a narrativ
judgment, the offense, and the punis
The report shall be in the form of a
naire prepared and supplied by the C
Criminal Appeals.

B. The Oklahoma Court of Crim
consider the punishment as well as a
ated by the way of appeal.

C. With regard to the sentence, th
mine:

1. Whether the sentence of death
the influence of passion, prejudice, or
factor;

2. Whether the evidence supports
judge's finding of a statutory aggravati
enumerated in this act; and

3. Whether the sentence of death
proportionate to the penalty impose
considering both the crime and the d

D. Both the defendant and the st
right to submit briefs within the tim
court, and to present oral argument t

E. The court shall include in its dec
those similar cases which it took int

additional to its authority r
errors, the court, with regard
tence, shall be authorized to:

1. Affirm the sentence of d

2. Set the sentence aside
modification of the sentence

F. The sentence review sh
appeal, if taken, and the revie
solidated for consideration.
decision on legal errors enum
tiation of the verdict, and the

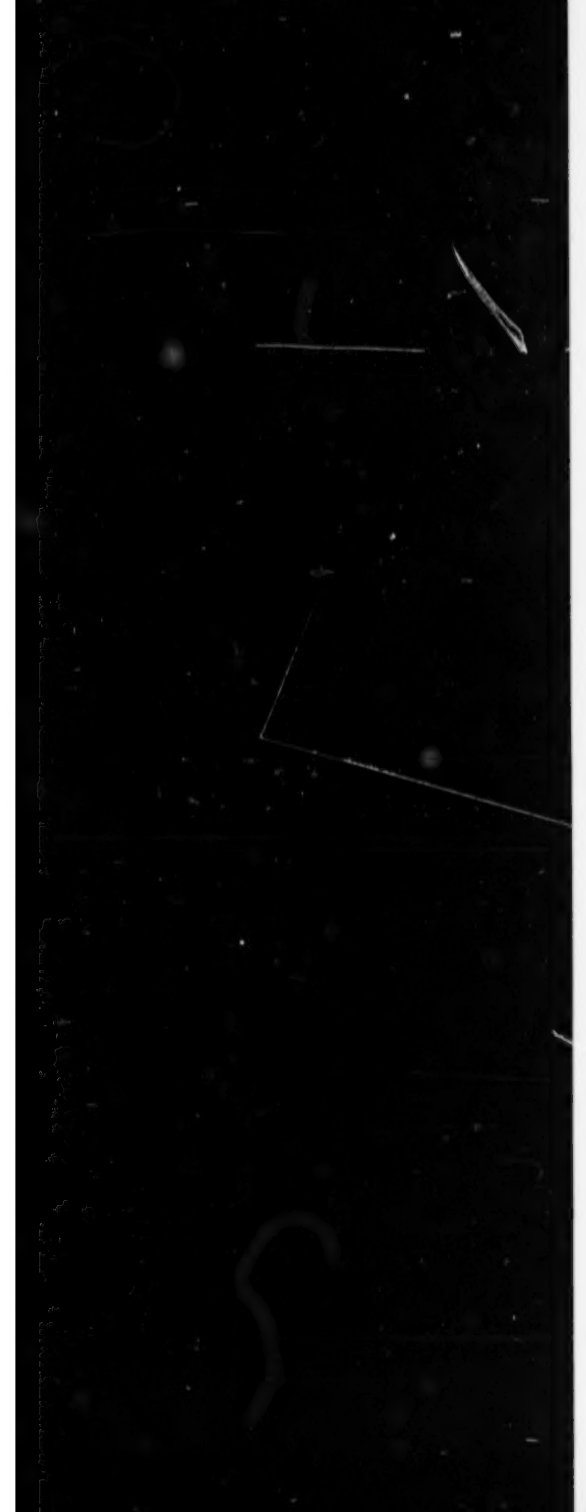
APPEND

**MEDIAN ELAPSED TIME I
SENTENCE OF DEATH A
CONVICTED MURDE
AND YEAR OF E**

State	1956	1957	19
Alabama	. . .	13.6	. .
Arizona	. . .	22.2	46
Arkansas	. . .	. . .	. .
California*	19.4	13.8	51
Colorado	18.4	7.9	. .
Connecticut	. . .	. . .	. .
Florida	24.5	29.6	36
Georgia**	11.9	10.3	14
Idaho	. . .	10.4	. .
Illinois	. . .	. . .	36
Indiana	. . .	. . .	. .
Iowa	. . .	. . .	. .
Kansas	. . .	. . .	. .
Kentucky	18.2	. . .	. .
Louisiana	23.3	24.0	12
Maryland	. . .	11.3	. .
Massachusetts	. . .	. . .	. .
Mississippi	7.8	24.1	29
Missouri	. . .	19.1	. .
Nebraska	. . .	. . .	. .
Nevada	. . .	. . .	. .
New Hampshire	. . .	. . .	. .
New Jersey	29.1	. . .	. .
New Mexico	16.4	. . .	. .
New York	10.8	21.4	19
North Carolina	23.7	. . .	11
Ohio*	13.2	6.8	12

State	1956	1
Oklahoma	14.6	1
Oregon	. . .	.
Pennsylvania	14.1	.
South Carolina	11.1	2
South Dakota	. . .	.
Tennessee	. . .	1
Texas	3.3	
Utah	78.7	.
Vermont	. . .	.
Virginia	. . .	
Washington	28.7	2
West Virginia	3.8	.
Wyoming	. . .	.
All states	14.0	1

*Bailey, *Deterrence and the Question In Deterrence Re* Table 1 (1980).



TEETERS – ZIBULKA
20 EXECUTED UNDI
1864-1967 BY STAT

STATE	NAME
ALABAMA	
No. 45	Wesley Vinc
46	Gabel Water
58	Frank Millh
62	Willie James
87	William Clar
102	Henry Danie
106	Daniel T. Re
110	F. Ernest Jol
126	J. C. Winters
133	Leveret For
141	Melvin Jacks
144	Jeremiah Re
148	Joe Henry J
—	
ARIZONA	
—	
ARKANSAS	
—	
CALIFORNIA	
Folsom	
No. 33	Earl Loomis
50	Ed Montijo
84	Aldrich Lut
San Quentin	
No. 47	William Wa
49	Henry Brow

STATE NA

54 Lo
75 Lo
77 Ch
98 Lo
106 La
122 Le
156 Ch
182 Ru

COLORADO

CONNECTICU

No. 9 Ch
11 Jos
20 Ra
51 So
62 Ca
66

FLORIDA

No. 14 Fo
47 Mc
64 Ro
73 Ivc
81 Na
82 Ed
83 Wi
106 Fre
107 Jar
120 Le
132 La
153 Na
158 Ab

STATE NA

GEORGIA

No.		
	10	Pri
	40	Ed
	64	Fre
	74	Ed
	90	Ric
	91	Ric
	92	Mc
	97	Gr
	100	Wi
	113	Ch
	124	Isa
	130	Jes
	136	Ed
	152	Le
	172	Ch
	185	Jar
	194	Fr
	195	He
	201	Ed
	203	Ch
	222	Be
	229	Ma
	233	S.
	237	Wi
	250	L.
	254	Da
	265	Isa
	274	Le
	276	Wi
	277	Jar
	279	J.
	287	He
	290	Te
	300	Jar
	314	Jo

STA

IDA

ILLI
No.

INDI
No.

IOW
No.

KAN

KEN

LOU

STATE		NAME	AGE	RACE	DATE
MAINE					
MARYLAND					
No.	2	Carroll Gibson	18	B	1925
	5	Ottie Simmons	19	B	1927
	8	Alfred Simms	19	B	1927
	49	John Lampkin	19	B	1943
	63	Charles Lee Carmen	19	B	1947
	65	Weldon Jones, Jr.	18	B	1947
	78	Leonard M. Shockey	17	B	1959
MASSACHUSETTS					
No.	9	Leong Gong	19	—	1909
	11	Andrei Ipson	19	—	1911
	54	Paul Giacomazza	19	—	1942
	61	Donald Millard	19	—	1943
MISSISSIPPI					
No.	6	Walter Johnson	19	B	1955
MISSOURI					
NEBRASKA					
NEVADA					
No.	18	Raymond Plunkett	17	—	1944
	22	David Blackwell	18	—	1949
NEW HAMPSHIRE					

STATE	NAME	AGE	RACE	DAT
NEW JERSEY				
No. 35	Stefano Ruggierri	17	W	191
38	Michael Sparks	16	B	191
66	William Battles	19	B	192
NEW MEXICO				
NEW YORK				
Auburn				
No. 54	David Dunn	19	W	191
Clinton				
Sing Sing				
No. 141	Stanley J. Hillstein	19	W	191
165	Elmer Hyatt	19	W	192
223	John Rye	19	W	192
242	Sam Wing	19	Chin	192
245	John Garuglia	19	W	192
246	Cosima Brescie	19	W	192
279	Israel Fisher	19	W	192
295	James Bolger	19	W	192
302	Fred Carmosino	19	W	192
306	Herbert Johnson	19	B	192
313	Francis Crowley	19	W	192
331	Thomas Carpenter	19	B	192
332	Charles Bates	19	B	192
372	Stanley Pluzdrak	17	W	192
403	Charles Ham	19	B	192
404	Frederick Fowler	18	B	192
424	Vincente Forte	19	W	192
426	Dominick Guaraglia	18	W	192
479	Lawrence Edwards	18	B	192

STATE	NAME	AGE	RACE	DA
489	Benitez Dejesus	18	B	19
490	Edward Height	17	W	19
491	William Diaz	18	B	19
506	Gordon Cooke	19	B	19
510	Lew York Bing	18	Chin	19
530	Jauvham Jackson	18	B	19
536	Harris Gray	18	B	19
537	Louis Smiley	19	B	19
553	Harley LaMarr	19	I	19
574	Allen Henry	19	B	19
580	Henry Matthews	18	W	19
587	William Byers	19	W	19
588	Norman Roye	17	B	19

NORTH CAROLINA

No. 27	Willie Black	18	B	19
112	Wilson Autrey	19	B	19
114	J. W. Ballard	17	B	19
119	Dudlay Moore	19	B	19
157	Caesar Miller	18	B	19
158	Arthur Gosnell	18	W	19
162	Allen Foster	19	W	19
164	William Long	19	B	19
168	Ed Hester	19	W	19
184	Robert Glenn Brown	18	B	19
193	Leroy McNeill	17	B	19
194	William Perry	18	B	19
209	L. J. Jefferson	17	B	19
227	Willie Richardson	19	B	19
232	Nathaniel Bryant	17	B	19
254	Otis Harris	17	B	19
260	John Henry Lee	19	B	19
272	Wayman Grainger	19	B	19

NORTH DAKOTA

STATE		NAME	AGE	RA
OHIO				
No.	8	Otto Lueth	16	V
	19	William Whaley	18	I
	20	Charles Hart	18	V
	25	William Taylor	18	I
	29	William Haas	17	V
	40	Carl Berg	19	V
	51	Herman Hamilton	19	I
	73	Hurley Beard	18	V
	82	Frank Mazzard	19	V
	108	Samuel Purpera	17	V
	131	Alex Kuszik	19	V
	147	William Clark	19	V
	151	Emmanuel Ross	17	I
	160	Floyd Hewitt	16	V
	161	John Coverson	18	I
	163	W. H. Wilson	19	I
	164	James Coleman	18	I
	174	Lee Akers	17	V
	188	Blanton Ralls	19	I
	204	Joseph Murphy	18	I
	222	Theo Blackam	19	I
	235	Thomas Williams	19	
	252	Pang Young	18	C
	265	Erwin Griffin	19	
	267	Louis Hand	17	
	273	Henry Hagert	19	
	288	Donald Frohner	16	
	295	Asbell Adams	19	
	313	Lon Stevenson	19	
	318	Louis A. Angel	19	
	325	Bernard Schreiber	19	

OKLAHOMA				
No.	40	George Oliver	18	
	56	Charlie Sands	19	

STATE	NAME	AGE	R
OREGON			
	_____		
PENNSYLVANIA			
	_____		
SOUTH CAROLINA			
No. 178	George Stimney	14	
	_____		
SOUTH DAKOTA			
	_____		
TENNESSEE			
	_____		
TEXAS			
	_____		
UTAH			
	_____		
VERMONT			
No. 5	Henry Welcome	18	
	_____		
VIRGINIA			
No. 2	Winston Green	17	
5	Benjamin Gilbert	19	
6	Arthrlius Christian (sic)	17	
20	Thurman Spinher	18	
31	John Eccles	17	
34	Harry Sitlington	17	
42	Byrd Jackson	18	
43	Virginia Christian	17	
65	Willie Puryear	19	

STATE	NAME
68	Arthur Neale
73	Lem Jones
78	Sherman Stanfield
79	Percy Ellis
82	Milton Maloy
83	Richard Green
84	Clifford Hickens
86	Minzer Harris
94	Guy Nixon
95	Tolson Bailey
103	Raleigh Haskins
118	Friz Lewis
119	Otto Clear
124	Rodney Hoke
140	James Washington
147	Alphonso Bellamy
149	Calvin Groome
150	Sam Pannell
178	Charles Johnson
194	Thomas Harrison

WASHINGTON

No.	6	William White
	33	Walter Dubuc
	47	Earl Talbott
	48	Roy Wright

WEST VIRGINIA

STATE NAME

WYOMING

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*W. BOWERS, EXECUTIONS IN AMERIC

W	=	White
B	=	Black
I	=	Indian
Chin	=	Chinese
—	=	Not reported

All numbers correspond to the numbers used
Teeters — Zibulka inventory.

APPEN

CHANGES OVER TIME
THEMES RECURRING IN GO
JUSTIFYING COMMUTATIO
FOR MURDERERS AND RAP

Themes in Commutation Statements
Responsible officials and/or jury urged commutation
Community urged commutation
Age of offender or his underprivileged status
Victim contributed to crime or was disreputable
Mental condition of offender
Crime was not premeditated
Evidence does not justify death penalty or is of doubtful nature
Number of cases

*Johnson, *Selective Factors in*
FORCES 165, 168 Table 3 (195

APPEN

PERSONS UNDER A
OF OFFENSE AWA
AS OF M

Age	Name
15	Todd Ice
16	Jose High
16	Johnny Johnson
16	Joseph Marshall
16	Reginald Smith
16	Monty Eddings
17	Frank Valencia
17	Willie Simpson
17	Sam Gibson
17	Andrew Legare
17	Joseph Brown
17	Dalton Prejean
17*	John Boutwell
17	James Roach
17	Rudolph Tyner
17	Billie Battie
17	Harvey Earvin
18	Jose Ceja
18	Raymond Tyson
18	Michael Leach
18	Lenson Hargrave
18	Ronald Jackson
18	Roy McKennon
18	Terry Goodwin
18	David Jarrell
18	John Young
18	Alphonso Morgan
18	Willie Reddix
18	Larry Jones

18*	Charles Gid
19	Ricky Tyson
19	Charles Nea
19	Douglas Sta
19	Earl Jackson
19	Marvin Wal
19	Jesse Rutled
19	Robert Bufo
19	Anthony Pe
19	Frank Smith
19	Donald Tho
19	Nathen Brov
19	Freddie Dav
19	Eugene Tho
19	Roger Collir
19	Carl Isaacs
19	Tony Amad
19	David Peek
19	Kenneth Da
19	Michael Ser
19	Daniel Bake
19	Jerry Sprous
19	Juan Caball
19	Luis Ruiz
19	James Cope
19	Lawrence J
19	Michael Pin
19	Larry Dean
19	Robert Glic
19	James Anth
19	Richard Sin
19	John Henry
19	Stanley Bur
19	William Ar

*Age when received at

W = White
B = Black
H = Hispanic
NA = Native Amer